IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 506 (MS) OF 2006

1. Rajesh Singh, S/o Sri Surendra Singh,
   R/o Court Road, in front of Govt. Doon Hospital, District Dehradun.
2. Sukhjeevan Singh, S/o Sri Ujagar Singh,
   R/o Basant Bihar Jawalapur, District Haridwar.
3. Sri Trilok Chand, S/o Sri Sunehara Singh,
   R/o Opposite P.N.B. Upper Road, Haridwar,
   Tehsil and District Haridwar.
4. Smt. Meena Devi, W/o Shri Ved Prakash,
5. Smt. Kalpana Sharma, W/o Sri Mukesh Sharma, Both the petitioners no. 4 and 5 are resident of Sharda Dham, Ranipur Jhal, Pargana Jawalpur, Tehsil & District Haridwar. .....Petitioner

Versus

Civil Judge & Others

Dated: 05.05.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Jintendra Chaudhary, Advocate for the petitioner.

By the preset writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 07.04.2006 passed by the respondent no. 1. Further prayer has been made for a writ of mandamus directing the lower court to decide the O.S. No. 344/2004 Sukhjeevan Singh & others Vs. State of Uttaranchal & others expeditiously within a period of three months.

Briefly stated, the petitioners have claimed themselves to be the owners of the land as well as in physical possession with regard to the agricultural land measuring 2.947 hectare of Khasra No. 805/1, 805/2, 823, 802, 803, 804, 821, 822 and 825 situated in Village Ranipur Pargana Jawalapur Tehsil & District Haridwar.

The petitioners along with one Mr. Manoj Gautam have filed a suit as Suit No. 203 of 2001 Manoj Gautam Versus State of Uttaranchal and others in the Court of respondent no. 1 for grant of permanent injunction. A temporary injunction was also prayed and on 5th July, 2001, the same was granted. Although an averment was made by the respondent no. 2 to get the suit abated. The petitioners have succeeded on 27.12.2003 in Revision No. 1 of 2004 and the revision was allowed. Petitioners have submitted that another suit was filed by the petitioners being Original Case No. 344 of 2004 Sukhjeevan Singh and others for cancellation of illegal leases on 17.12.2003 in respect of Khasra No. 84 area 0.686 hectare Khasra No. 822 area 0.092 hectare and Khasra No. 825 area 0.312 hectare. On 18.12.2004, the respondent no. 3 has moved an application under Order 7 Rule 11 C.P.C. for rejection of the plaint and the same was dismissed and the revision was also dismissed on 06.10.2005. thereafter, another application 89 C 2 was filed on 11.11.2005 by the respondent no. 2 before the Civil Judge for the stay of the suit.

Petitioners have submitted that instead of disposing of the application U/s 10 and 151 C.P.C., the Civil Judge has connected both the suits without considering the objections filed by the petitioner.

The sole contention of the petitioners is that there was no application filed under Order 4(a) and as such, joint trial

cannot be made. Order 4(a) of the Code of Civil Procedure reads as under:-

"(a) for rule 1(1) substitute the following:-

"1. (1) Every suit shall be instituted by presenting to the court or such officer as it appoints in this behalf a plaint, together with a true copy for service with the summons upon each defendant, unless the court for good cause shown allows time for filing such copies.

(2) The court-fee chargeable for such service be paid in the case of suits when the plaint is filed and in the case of all other proceedings when the process is applied for

(b) Re-number the present sub-rule (2) as sub-rule (3)"

As will appear from the prayer of both the suits that in Suit No. 203 of 2001, relief has been claimed to the following effect:-

"भूमि खसरा संख्या 805 क्षेत्रफल 0.88 व 805/2 क्षेत्रफल 0.061

खसरा संख्या 823 क्षेत्रफल– 0.452,

खसरा संख्या 802 क्षेत्रफल– 0.377,

खसरा नं0 803 क्षेत्रफल– 0.467,

खसरा नं0 804 क्षेत्रफल– 0.418,

खसरा नं0 821 क्षेत्रफल– 0.483,

खसरा नं0 822 क्षेत्रफल– 0.092,

खसरा नं0 825 क्षेत्रफल– 0.309"

Whereas in Suit No. 344 of 2001, the relief is confined to the following property as will appear from the schedule:-

"खसरा नं0 821 रकवई 0.686 हे0 व खसरा नं0 822 रकवई 0.092 है0 एवं खसरा नम्बर 825 रकवई 0.312 है0 कुल किले तीन कुल रकबई 1.290 है0 स्थित ग्राम रानीपुर परगना ज्वालापुर तहसील व जिला हरिद्वार।"

In view of the aforesaid submission made by the petitioners, liberty is given to file an application for

reconsideration of the order before the Civil Judge (Junior Division), Haridwar for passing a fresh order on the application after a proper application is filed by the respondent no. 3 making a prayer for the consolidation as contained in the Code of Civil Procedure.

Subject to the aforesaid, writ petition is dispose of. No order as to costs.

(Rajesh Tandon, J.)

05.05.2006
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